R. S. Klein Trailer Repair *and* Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 13–CA–31861

February 9, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND TRUESDALE

Upon a charge filed on July 16, 1993, by Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on August 19, 1993, against R. S. Klein Trailer Repair, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.[1]

On November 15, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On November 17, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 15, 1993, notified the Respondent that unless an answer were received September 22, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] Although the copies of the charge and complaint which were served by certified mail were returned marked "unclaimed" by the U.S. Postal Service, the Respondent's refusal or failure to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation with an office and place of business in Chicago, Illinois, has been engaged in the repair, service, and maintenance of tractor-trailers. During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations, purchased and received at its Chicago, Illinois facility goods valued in excess of $50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time mechanic employees including journeyman mechanics Class A and Class B, apprentice, tireman, painters, parts foreman, partsman and utility employees employed by Respondent at its facility now located 4140 S. Oakley, Chicago, Illinois; but excluding office and clerical employees, truck drivers, janitors, general laborers and all guards, professional employees and supervisors as defined in the Act.

At all material times, the Union has been certified by the Board as the exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About December 1, 1991, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, which agreement was to remain in effect until November 30, 1994, and continuously thereafter from year to year, unless either party served the other party with 60 days notice of its desire to terminate or modify the agreement.

Although required by articles 6 and 7 of the collective-bargaining agreement, since about February 1, 1993, and at all material times, the Respondent has failed and refused to make the appropriate health and welfare and pension fund contributions to the Union.

Although required by article 21 of the collective-bargaining agreement, since about May 1, 1993, and at all

material times, the Respondent has failed and refused to remit any initiation fees and dues contributions from its employees to the Union.

Since about February 1, 1993, the Respondent failed to continue in effect all the terms and conditions of the agreement described above, by unilaterally abrogating articles 6, 7, and 21.

Although the terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing since February 1, 1993, to make contractually required health and welfare and pension fund contributions to the Union, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since May 1, 1993, to remit to the Union any initiation fees and dues contributions from employees, we shall order the Respondent to remit such withheld dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, R. S. Klein Trailer Repair, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1991–1994 agreement by failing to make the appropriate health and welfare and pension fund contributions and to remit any initiation fees and dues contributions from its employees to the Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO, in abrogation of articles 6, 7, and 21 of the agreement. The unit is:

> All full time and regular part time mechanic employees including journeyman mechanics Class A and Class B, apprentice, tireman, painters, parts foreman, partsman and utility employees employed by Respondent at its facility now located 4140 S. Oakley, Chicago, Illinois; but excluding office and clerical employees, truck drivers, janitors, general laborers and all guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with articles 6 and 7 of the 1991–1994 agreement by making the appropriate health and welfare and pension fund contributions to the Union, and make whole the employees for any loss of benefits or expenses resulting from its failure to do so since February 1, 1993, in the manner set forth in the remedy section of this decision.

(b) Comply with article 21 of the 1991–1994 agreement by remitting to the Union any initiation fees and dues contributions from employees, and remit to the Union any such initiation fees and dues contributions that have not been remitted since May 1, 1993, plus interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."[2] Copies of

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 9, 1994

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of our 1991–1994 collective-bargaining agreement with Automobile Mechanics' Union Local No. 701, International Association of Machinists and Aerospace Workers, AFL–CIO, by failing to make the appropriate health and welfare and pension fund contributions and to remit any initiation fees and dues contributions from employees to the Union, in abrogation of articles 6, 7, and 21 of the agreement. The unit is:

> All full time and regular part time mechanic employees including journeyman mechanics Class A and Class B, apprentice, tireman, painters, parts foreman, partsman and utility employees employed us at our facility now located 4140 S. Oakley, Chicago, Illinois; but excluding office and clerical employees, truck drivers, janitors, general laborers and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL comply with articles 6 and 7 of the 1991–1994 agreement by making the appropriate health and welfare and pension fund contributions to the Union, and WE WILL make whole the employees for any loss of benefits or expenses resulting from our failure to do so since February 1, 1993.

WE WILL comply with article 21 of the 1991–1994 agreement by remitting to the Union any initiation fees and dues contributions from employees, and WE WILL remit to the Union any such initiation fees and dues contributions that have not been remitted since May 1, 1993, plus interest.

R. S. KLEIN TRAILER REPAIR